

**CHAPTER 45-06-12**  
**REGULATION TO IMPLEMENT NORTH DAKOTA CENTURY CODE CHAPTER**  
**26.1-36.4, RELATING TO HOSPITAL AND MEDICAL INSURANCE**

Section

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**45-06-12-01. Definitions.** As used in this chapter and North Dakota Century Code chapter 26.1-36.4:

1. "Preexisting condition exclusion" means a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the effective date of coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before such date.
2. "Waiting period" means, with respect to a health benefit plan, whether offered on a group or individual basis, and an individual who is a potential participant or beneficiary in the plan, the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the plan.

**History:** Effective December 1, 1997.

**General Authority:** NDCC 28-32-02(1)

**Law Implemented:** NDCC 26.1-36.4

**45-06-12-02. Prohibiting discrimination against participants and beneficiaries based on health status-related factors.**

1. An insurer offering group health insurance coverage in connection with a group health benefit plan may not establish rules for eligibility, including continued eligibility, of any individual to enroll under the terms of the plan based on a health status-related factor, as defined in subsection 20 of North Dakota Century Code section 26.1-36.3-01.
2. Subsection 1 shall not be construed to:
  - a. Require an insurer to provide particular benefits other than those provided under the terms of the plan or coverage; or

- b. Prevent the insurer from establishing limitations or restrictions on the amount, level, extent, or nature of the benefits or coverage for similarly situated individuals enrolled in the plan or coverage.
- 3. An insurer offering group health insurance coverage in connection with a group health benefit plan may not require an individual as a condition of enrollment or continued enrollment under the plan to pay a premium or contribution that is greater than the premium or contribution for a similarly situated individual enrolled in the plan based on any health status-related factor, as defined in subsection 20 of North Dakota Century Code section 26.1-36.3-01.
- 4. Subsection 3 shall not be construed to:
  - a. Restrict the amount that an employer may be charged by an insurer for coverage under a group health benefit plan; or
  - b. Prevent the insurer from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence for a bona fide wellness program. For purposes of this subsection, a bona fide wellness program is a program of health promotion and disease prevention.

**History:** Effective December 1, 1997.

**General Authority:** NDCC 28-32-02(1)

**Law Implemented:** NDCC 26.1-36.4

**45-06-12-03. Special enrollments for certain individuals who lose coverage.**

- 1. An insurer offering group health insurance coverage in connection with a group health benefit plan is required to permit employees and dependents described in this section to enroll for coverage under the terms of the plan if the conditions in subsection 4 are satisfied and the enrollment is requested within the period described in subsection 5.
- 2. An employee is described in this section if:
  - a. The employee is eligible, but not enrolled, for coverage under the terms of the plan; and
  - b. When enrollment was previously offered to the employee under the plan and was declined by the employee, the employee was covered under another group health benefit plan or had other health insurance coverage.
- 3. A dependent is described in this section if:

- a. The dependent is a dependent of an employee participating in the plan;
  - b. The dependent is eligible, but not enrolled, for coverage under the terms of the plan; and
  - c. When enrollment was previously offered under the plan and was declined, the dependent was covered under another group health benefit plan or had other health insurance coverage.
4. An employee or dependent described above is eligible to enroll during a special enrollment period if each of the following applicable conditions is met:
- a. When the employee declined enrollment for the employee or the dependent, the employee stated in writing that coverage under another group health benefit plan or other health insurance coverage was the reason for declining enrollment. This paragraph only applies if:
    - (1) The plan required such a statement when the employee declined enrollment; and
    - (2) The employee is provided with notice of the requirement to provide the statement in this section, and the consequences of the employee's failure to provide the statement, at the time the employee declined enrollment.
  - b. (1) When the employee declined enrollment for the employee or dependent under the plan, the employee or dependent had Consolidated Omnibus Budget Reconciliation Act [Pub. L. 99-272; 100 Stat. 82] continuation coverage under another plan and Consolidated Omnibus Budget Reconciliation Act continuation coverage under the other plan has since been exhausted; or
  - (2) If the other coverage that applied to the employee or dependent when enrollment was declined was not under a Consolidated Omnibus Budget Reconciliation Act continuation provision, either the other coverage has been terminated as a result of loss of eligibility for the coverage or employer contributions towards the other coverage has been terminated. For this purpose, loss of eligibility for coverage includes a loss of coverage as a result of legal separation, divorce, death, termination of employment, reduction of the number of hours of employment and any loss of eligibility after a period that is measured by reference to any of the foregoing.

5. The employee is required to request enrollment for the employee or the employee's dependent not later than thirty days after the exhaustion of the other coverage described in this section or termination of other coverage has resulted in the loss of eligibility for the other coverage for items described in this section or following the termination of employer contributions toward the other coverage. The plan may impose the same requirements that apply to employees who are otherwise eligible under the plan to immediately request enrollment for coverage.
6. Enrollment is effective not later than the first day of the first calendar month beginning after the date the completed request is received.

**History:** Effective December 1, 1997.

**General Authority:** NDCC 28-32-02(1)

**Law Implemented:** NDCC 26.1-36.4

**45-06-12-04. Special enrollment periods for certain dependent beneficiaries.**

1. A group health benefit plan that makes coverage available with respect to dependents of a participant is required to provide a special enrollment period to permit individuals described in this section to be enrolled for coverage under the terms of the plan if the enrollment is requested within the time period described in subsection 7. The enrollment is effective at the time described in subsection 8. The special enrollment rights under this section apply without regard to the dates on which an individual would otherwise be able to enroll under the plan.
2. An individual is described in this section if:
  - a. The individual is an employee who is eligible, but not enrolled, in the plan;
  - b. The individual would be a participant but for a prior election by the individual not to enroll in the plan during a previous enrollment period; and
  - c. A person becomes a dependent of the individual through marriage, birth, adoption, or placement for adoption.
3. An individual is described in this section if either:
  - a. The individual becomes the spouse of a participant; or
  - b. The individual is a spouse of a participant and a child becomes a dependent of a participant through birth, adoption, or placement for adoption.

4. An employee who is eligible, but not enrolled, in the plan, and an individual who is a dependent of such employee, is described in this section if the employee would be a participant but for a prior election by the employee not to enroll in the plan during a previous enrollment period, and either:
  - a. The employee and the individual become married; or
  - b. The employee and the individual are married and a child becomes a dependent of the employee through birth, adoption, or placement for adoption.
5. An individual is described in this section if:
  - a. The individual is a dependent of a participant; and
  - b. The individual becomes a dependent of such participant through marriage, birth, adoption, or placement for adoption.
6. An employee who is eligible, but not enrolled, in the plan, and an individual who is a dependent of such employee, is described in this section if:
  - a. The employee would be a participant but for a prior election by the employee not to enroll in the plan during a previous enrollment period; and
  - b. The dependent becomes a dependent of the employee through marriage, birth, adoption, or placement for adoption.
7. The special enrollment period under this section is a period of not less than thirty days and begins on the date of marriage, birth, adoption, or placement for adoption. The period does not begin earlier than the date the plan makes dependent coverage generally available.
8. Enrollment is effective:
  - a. In the case of marriage, not later than the first day of the first calendar month beginning after the date the completed request for enrollment is received by the plan;
  - b. In the case of a dependent's birth, the date of such birth; and

- c. In the case of a dependent's adoption or placement for adoption, the date of such adoption or placement for adoption.

**History:** Effective December 1, 1997.

**General Authority:** NDCC 28-32-02(1)

**Law Implemented:** NDCC 26.1-36.4

**45-06-12-05. Notice of enrollment rights.** On or before the time an employee is offered the opportunity to enroll in a group health benefit plan, the plan is required to provide the employee with a description of the plan's special enrollment rules under this chapter. A group health benefit plan using the following model description of the special enrollment rules is deemed to be in compliance with this section:

If you decline enrollment for yourself or your dependents, including your spouse, because of other health insurance coverage, you may in the future be able to enroll yourself or your dependents in this plan, provided that you request enrollment within thirty days after your other coverage ends. In addition, if you have a new dependent as a result of marriage, birth, adoption, or placement for adoption, you may be able to enroll yourself or your dependents, provided that you request enrollment within thirty days after the marriage, birth, adoption, or placement for adoption.

**History:** Effective December 1, 1997.

**General Authority:** NDCC 28-32-02(1)

**Law Implemented:** NDCC 26.1-36.4

**45-06-12-06. Conformance with the Health Insurance Portability and Accountability Act of 1996.** This chapter, as well as North Dakota Century Code chapter 26.1-36.4, will be interpreted by the commissioner to conform with the requirements of the Health Insurance Portability and Accountability Act of 1996 [Pub. L. 104-191; 110 Stat. 1936; 29 U.S.C. 1181 et seq.].

**History:** Effective December 1, 1997.

**General Authority:** NDCC 28-32-02(1)

**Law Implemented:** NDCC 26.1-36.4